

1 KAMALA D. HARRIS
Attorney General of California
2 ALFREDO TERRAZAS
Senior Assistant Attorney General
3 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
4 State Bar No. 101336
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2105
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Statement of Issues
12 Against:

Case No. **2013-112**

13 **ABIGAIL WILSON NEWTON**
14 **AKA ABIGAIL WHALEY WILSON**

STATEMENT OF ISSUES

15 **Registered Nurse License Applicant**

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Statement of Issues solely in
20 her official capacity as the Executive Officer of the Board of Registered Nursing, Department of
21 Consumer Affairs.

22 2. On or about November 28, 2011, the Board of Registered Nursing, Department of
23 Consumer Affairs received an application for a Registered Nurse License from Abigail Wilson
24 Newton, aka Abigail Whaley Wilson (Respondent). On or about November 22, 2011,
25 Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and
26 representations in the application. The Board denied the application on December 30, 2011.

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JURISDICTION

3. This Statement of Issues is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2736 of the Code provides, in pertinent part, that the Board may deny a license when it finds that the applicant has committed any acts constituting grounds for denial of licensure under section 480 of that Code.

STATUTORY PROVISIONS

5. Section 475 of the Code states:

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

(1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.

(2) Conviction of a crime.

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(b) Notwithstanding any other provisions of this code, the provisions of this division shall govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2) of subdivision (a).

(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits.

6. Section 480 of the Code states:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

1 (3) (A) Done any act that if done by a licentiate of the business or profession
2 in question, would be grounds for suspension or revocation of license.

3 (B) The board may deny a license pursuant to this subdivision only if the
4 crime or act is substantially related to the qualifications, functions, or duties of the
5 business or profession for which application is made.

6 7. Section 482 of the Code states:

7 Each board under the provisions of this code shall develop criteria to evaluate
8 the rehabilitation of a person when:

9 (a) Considering the denial of a license by the board under Section 480; or

10 (b) Considering suspension or revocation of a license under Section 490.

11 Each board shall take into account all competent evidence of rehabilitation
12 furnished by the applicant or licensee.

13 8. Section 2761 of the Code states:

14 The board may take disciplinary action against a certified or licensed nurse or
15 deny an application for a certificate or license for any of the following:

16 (a) Unprofessional conduct, which includes, but is not limited to, the
17 following:

18 (f) Conviction of a felony or of any offense substantially related to the
19 qualifications, functions, and duties of a registered nurse, in which event the record of
20 the conviction shall be conclusive evidence thereof. . . .

21 9. Section 2762 of the Code states:

22 In addition to other acts constituting unprofessional conduct within the meaning
23 of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person
24 licensed under this chapter to do any of the following:

25 (b) Use any controlled substance as defined in Division 10 (commencing with
26 Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous
27 device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner
28 dangerous or injurious to himself or herself, any other person, or the public or to the
extent that such use impairs his or her ability to conduct with safety to the public the
practice authorized by his or her license.

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1 (c) Be convicted of a criminal offense involving the prescription, consumption,
2 or self-administration of any of the substances described in subdivisions (a) and (b) of
3 this section, or the possession of, or falsification of a record pertaining to, the
substances described in subdivision (a) of this section, in which event the record of
the conviction is conclusive evidence thereof.

4 10. Section 2765 states:

5 A plea or verdict of guilty or a conviction following a plea of nolo
6 contendere made to a charge substantially related to the qualifications, functions and
7 duties of a registered nurse is deemed to be a conviction within the meaning of this
8 article. The board may order the license or certificate suspended or revoked, or may
9 decline to issue a license or certificate, when the time for appeal has elapsed, or the
judgment of conviction has been affirmed on appeal or when an order granting
probation is made suspending the imposition of sentence, irrespective of a subsequent
order under the provisions of Section 1203.4 of the Penal Code allowing such person
to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside
the verdict of guilty, or dismissing the accusation, information or indictment.

10 REGULATORY PROVISIONS

11 11. California Code of Regulations, title 16, section 1444 states:

12 A conviction or act shall be considered to be substantially related to the
13 qualifications, functions or duties of a registered nurse if to a substantial degree it
14 evidences the present or potential unfitness of a registered nurse to practice in a
15 manner consistent with the public health, safety, or welfare. Such convictions or acts
shall include but not be limited to the following:

16 (a) Assaultive or abusive conduct including, but not limited to, those violations
listed in subdivision (d) of Penal Code Section 11160.

17 (b) Failure to comply with any mandatory reporting requirements.

18 (c) Theft, dishonesty, fraud, or deceit.

19 (d) Any conviction or act subject to an order of registration pursuant to Section
20 290 of the Penal Code.

21 12. California Code of Regulations, title 16, section 1445 states:

22 (a) When considering the denial of a license under Section 480 of the code,
the board, in evaluating the rehabilitation of the applicant and his/her present
23 eligibility for a license will consider the following criteria:

24 (1) The nature and severity of the act(s) or crime(s) under consideration as
grounds for denial.

25 (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s)
26 under consideration as grounds for denial which also could be considered as grounds
for denial under Section 480 of the code.

27 (3) The time that has elapsed since commission of the act(s) or crime(s)
28 referred to in subdivision (1) or (2).

(4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.

(5) Evidence, if any, of rehabilitation submitted by the applicant. . . .

DRUGS

13. Escitalopram (brand name Lexapro) is a dangerous drug pursuant to Business and Professions Code section 4022. It is used for treating depression and generalized anxiety disorder.

14. Ritalin is a Schedule II controlled substance as designated by Health and Safety Code section 11055(d)(6), and is classified as a dangerous drug pursuant to Business and Professions Code section 4022. Ritalin is used in the treatment of attention deficit hyperactivity disorders.

FIRST CAUSE FOR DENIAL OF APPLICATION

(April 10, 2008 Criminal Convictions for DUI, Driving With Blood Alcohol Content of 0.08 Percent or More and Hit and Run, on December 4, 2007)

15. Respondent's application is subject to denial under sections 480, subdivision (a)(1) and subdivision (a)(3)(A) of the Code in that she was convicted of crimes that are substantially related to the qualifications, duties, and functions of a registered nurse, which would also be grounds for discipline for a licensed registered nurse under Code section 2761, subdivision (f). The circumstances are as follows:

a. On or about April 10, 2008, in a criminal proceeding entitled *The People of the State of California v. Abigail Whaley Wilson*, in the Orange County Superior Court, Harbor Justice Center-Newport Beach Facility, Case No. 07HM09815, Respondent was convicted on her plea of guilty to violating Vehicle Code sections 23152(a) (driving under the influence of alcohol), 23152(b) (driving with a blood alcohol level (BAC) of 0.08% or more), to wit: BAC of 0.26%, and 20002(a) (hit and run), misdemeanors, with an enhancement pursuant to Vehicle Code section 23538 for having a BAC of 0.20% or higher.

b. As a result of the convictions, Respondent was placed on summary probation for three (3) years and ordered to pay various fines and fees, attend and complete a

1 9-month Level 2 First Offender Alcohol Program, pay restitution in an amount to be determined
2 by the Court, not drive without a valid driver's license in her possession, and not drive without
3 proof of valid auto liability insurance or financial responsibility. On or about February 8, 2012,
4 the Court granted Respondent's Petition for Relief, set aside the conviction and dismissed the
5 charges pursuant to Penal Code section 1203.4.

6 c. The facts that led to the convictions are that on or about December 4, 2007, at
7 approximately 8:40 p.m., Costa Mesa Police Department officers were dispatched to a hit and run
8 traffic collision that occurred at 3002 Royce Lane, in the City of Costa Mesa, California. Upon
9 arrival, officers saw people pointing in a northbound direction as to the whereabouts of the person
10 and vehicle responsible for the hit and run. Officers asked the witnesses what the vehicle looked
11 like and were told it was a darker color Nissan. Officers began looking in the vicinity for the
12 vehicle responsible for the hit and run and spotted a grey 2001 Nissan. As officers followed the
13 vehicle, they could hear a loud flopping noise that appeared to be coming from a flat tire. The
14 vehicle made a right hand turn to northbound College from Watson, failing to stop at the stop
15 sign. Officers activated their overhead lights and stopped the vehicle.

16 d. When officers approached the vehicle, they opened the driver's door of the
17 vehicle and Respondent almost fell out. The officer grabbed Respondent and assisted her to her
18 feet. Respondent stumbled to the back of the car and had difficulty standing. Officers could hear
19 a very heavy slur to her speech and observed her eyes to be red, watery and bloodshot, and a
20 strong odor of an alcoholic beverage emanated from Respondent's breath and person. Officers
21 directed Respondent to the back of the police unit and, as Respondent continued to stumble,
22 almost falling once, officers grabbed her left arm and assisted her to the curb and had her sit.

23 e. During the investigation, officers observed damage to Respondent's vehicle,
24 paint transfers, and brush and a branch stuck in the hood from an unknown tree or bush,
25 apparently from vegetation that she struck. Respondent was asked if she had been involved in a
26 traffic collision and Respondent told officers multiple times that she did not care and for officers
27 to take her to jail, and then told them that she did not know anything about the collision. Officers
28 then began a DUI investigation and field sobriety tests of Respondent. Respondent refused to

1 cooperate in the performance of field sobriety tests and admitted to officers that she had been
2 drinking vodka and had taken Lexapro and Ritalin. When asked how much vodka she drank,
3 Respondent told officers she had drunk half the bottle that was in her vehicle. Officers then
4 placed Respondent under arrest for driving under the influence of alcohol. Officers informed
5 Respondent that since she had taken Lexapro and Ritalin, that she was required to submit to a
6 chemical test. Respondent was handcuffed and sat back down on the curb and while waiting for a
7 unit to transport her urinated in her pants. Respondent was then escorted to a patrol unit and
8 transported to the Orange County Jail for booking. The result of a blood test was 0.26% BAC.

9 **SECOND CAUSE FOR DENIAL OF APPLICATION**

10 **(Unprofessional Conduct - Dangerous Use of Alcohol)**

11 16. Respondent's application is subject to denial under sections 480, subdivision (a)(3)(A)
12 of the Code, in that on or about December 4, 2007, Respondent used alcoholic beverages to an
13 extent or in a manner that was dangerous and injurious to herself and the public when she
14 operated a motor vehicle while under the influence of alcohol, as detailed in paragraph 15, above,
15 which is a violation of section 2762, subdivision (b) of the Code for a licensed registered nurse.

16 **THIRD CAUSE FOR DENIAL OF APPLICATION**

17 **(Unprofessional Conduct - Conviction of Alcohol-Related Offenses)**

18 17. Respondent's application is subject to denial under sections 480, subdivision (a)(3)(A)
19 of the Code in that on or about April 10, 2008, Respondent was convicted of criminal offenses
20 involving the consumption of alcohol as detailed in paragraph 15, above, which are violations of
21 section 2762, subdivision (c) of the Code for a licensed registered nurse.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Denying the application of Abigail Wilson Newton, aka Abigal Whaley Wilson, for a Registered Nurse License;
2. Taking such other and further action as deemed necessary and proper.

DATED:

August 9, 2012

Louise R. Bailey
LOUISE R. BAILEY, M.ED., RN
Executive Officer

Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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